

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

BIRMINGHAM ASSOCIATES LTD,

Plaintiff,

— against —

ABBOTT LABORATORIES,

Defendant.

07 Civ. 11332 (SAS)

**NOTICE OF CROSS-MOTION FOR AN ORDER  
ENJOINING ALTERNATIVE DISPUTE RESOLUTION**

**PLEASE TAKE NOTICE** that, upon the accompanying Memorandum of Law of Plaintiff Birmingham Associates Ltd. (“Birmingham”) in Opposition to the Motion of Abbott Laboratories Vascular Enterprises, Inc. (“ALVE”), to Intervene and Compel Alternative Dispute Resolution (“ADR”), and in Support of Birmingham’s Cross-Motion for an Order Enjoining ADR, the Declaration of Charles K. MacDonald and the Exhibits annexed thereto, the Affirmation of George K. Foster and the Exhibits annexed thereto, and all prior pleadings and proceedings heretofore had herein, Birmingham will move this Court, before the Honorable Shira A. Scheindlin, at the United States Courthouse, 500 Pearl Street, New York 10007, at a time and date to be determined by the Court, for an Order permanently enjoining ALVE from:

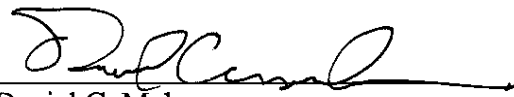
(a) seeking, on behalf of Defendant Abbott Laboratories (“Abbott”), a determination in ADR that Abbott did not violate that certain Keep Well Agreement dated May 5, 2005 in connection with the termination of the ZoMaxx™ Drug-Eluting Coronary Stent System (the “ZoMaxx Stent”), and

(b) seeking determinations in ADR that neither ALVE, nor any of its affiliates, including

Abbott, violated that certain Research and Development Funding Agreement dated May 5, 2005 in connection with the termination of the ZoMaxx Stent, and granting such other and further relief as the Court deems appropriate.

Dated: New York, New York  
February 19, 2008

DECHERT LLP

By:   
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**PROPOSED ORDER**

This matter having been brought before the Court by Dechert LLP, attorneys for plaintiff Birmingham Associates Ltd. (“Birmingham”), on its Cross-Motion for an Order Enjoining Alternative Dispute Resolution (“ADR”),

And the Court having considered all papers filed in support of, and in opposition to, Birmingham’s Cross-Motion, and all prior proceedings herein, and for good cause shown,

IT IS HEREBY ORDERED that Birmingham’s Cross-Motion is GRANTED; and

IT IS HEREBY ORDERED that Abbott Laboratories Vascular Enterprises, Inc. (“ALVE”) is permanently enjoined from: (a) seeking, on behalf of Defendant Abbott Laboratories (“Abbott”), a determination in ADR that Abbott did not violate that certain Keep Well Agreement dated May 5, 2005 in connection with the termination of the ZoMaxx™ Drug-Eluting Coronary Stent System (the “ZoMaxx Stent”), and (b) seeking determinations in ADR that neither ALVE, nor any of its affiliates, including Abbott, violated that certain Research and

Development Funding Agreement dated May 5, 2005 in connection with the termination of the ZoMaxx Stent.

Dated: \_\_\_\_\_

\_\_\_\_\_  
Hon. Shira A. Scheindlin, U.S.D.J.